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Subject: Maliseet Jurisdiction in Maine

Jeff,

Thank you again for taking the time to talk with me about the Settlement Act and the Maliseet's position regarding the Act. I want to reiterate one thing in light of your comments, and those of others, that it appears Congress intended the state to have supremacy over the Maine Tribes. Congress explicitly did not intend to do anything in 1980, EXCEPT, enact legislation reflecting State/Tribal agreements on the Settlement of Tribal land claims in Maine. The legislative history of the 1980 Settlement Act is replete with statements by all the parties and Congress to that effect.

Agreements, or lack thereof, between the state of Maine and the Maine Tribes created the contours of the Act. That is why it is critical to look at what the state and the Tribes' thought they were agreeing to at the time the Act was signed into law. The state entered into extensive negotiations with the Penobscots and the Passamaquoddy regarding the state's jurisdictional relationship with these two federally recognized Tribes. Their agreement on this issue is part of the Act.

In regard to the Maliseet, the state fought federal recognition and threatened Congress that if the Tribe was recognized, the entire settlement would be jeopardized and could need to go back to the Maine legislature for review. Subsequently, Congress did provide the Maliseet with federal recognition and the rights that go with it. The state, therefore, did not anticipate the Maliseet's federal recognition and failed to negotiate any jurisdictional agreements with the Maliseet prior to the passage of the Act. In 1982, the state attempted to remedy its miscalculation by unilaterally declaring that the Maliseet have no authority or jurisdiction in Maine (30 MRS 6206-A)-an action only Congress can take. Furthermore, when the state failed to get the Maliseet's agreement to this unilateral action regarding jurisdiction pursuant to 25 USC 1725 (e)(2) and Congress failed to ratify the 1982 state act, it left the Maliseet's inherent Sovereignty and jurisdiction intact.

Moreover, 1725(a) does not remove the Maliseet's jurisdiction over their lands. 1725(a) only provides the state with some concurrent jurisdiction it would not otherwise have over a federally recognized Tribe. However, this acquired jurisdiction by the state is not by its terms exclusive, nor does it trump the Maliseet's jurisdiction.

Therefore, If EPA does not retain the NPDES authority and approves the state's NPDES application over Maliseet lands, it must also provide the Tribe with veto authority and the right to add its own criteria to each permit that may impact upon its lands. To do otherwise, would provide authority to Maine that it did not receive from Congress, or from an executed agreement with the

Tribe.

Thank you for your time and effort on this matter. Doug Luckerman